

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation)
Against:)**

Veronica Rebeca Rivera M.D.)

File No. 800-2013-000947

**Physician's and Surgeon's)
Certificate No. A 93252)**

Respondent)

DECISION


The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on August 16, 2017.

IT IS SO ORDERED July 17, 2017.

MEDICAL BOARD OF CALIFORNIA

By:


**Michelle Anne Bholat, Chair
Panel B**

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 LAWRENCE MERCER
Deputy Attorney General
4 State Bar No. 111898
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Attorneys for Complainant

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 800-2013-000947.

11 **VERONICA REBECA RIVERA, M.D.**
12 706 N. Winchester Blvd.
13 San Jose, CA 95128

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 Physician's and Surgeon's Certificate No. A93252

15 Respondent.
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17 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
20 of California. She brought this action solely in her official capacity and is represented in this
21 matter by Xavier Becerra, Attorney General of the State of California, by Lawrence Mercer.

22 2. Respondent Veronica Rebecca Rivera, M.D. is represented in this matter by her
23 attorneys Barry C. Marsh and Hinshaw, Marsh, Still & Hinshaw, 12901 Saratoga Avenue.
24 Saratoga, CA 95070.
25

26 3. On or about November 4, 2005, the Medical Board of California issued Physician's
27 and Surgeon's Certificate Number A93252 to Veronica Rebeca Rivera, M.D. (Respondent). The
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1 Physician's and Surgeon's certificate was in full force and effect at all times relevant to the
2 charges brought herein and will expire on October 31, 2017, unless renewed.

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4 **JURISDICTION**

5 4. On April 10, 2015, Complainant Kimberly Kirchmeyer, in her official capacity as the
6 Executive Director of the Board, filed Accusation No. 800-2013-000947 (Accusation) against
7 Respondent. The Accusation was duly served upon Respondent and she timely filed a Notice of
8 Defense. A copy of the Accusation is attached hereto as Exhibit A.

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10 **ADVISEMENT AND WAIVERS**

11 5. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 800-2013-000947.

13 6. Respondent has carefully read and fully understands the contents, force and effect of
14 this Stipulated Settlement and Disciplinary Order, and has fully reviewed and discussed same
15 with her attorney of record.

16 7. Respondent is fully aware of her legal rights in this matter including her right to a
17 hearing on the charges and allegations contained in Accusation No. 800-2013-000947, her right to
18 present witnesses and evidence and to testify on her own behalf, her right to confront and cross-
19 examine all witnesses testifying against her, her right to the issuance of subpoenas to compel the
20 attendance of witnesses and the production of documents, her right to reconsideration and court
21 review of an adverse decision, and all other rights accorded her pursuant to the California
22 Administrative Procedure Act, the California Code of Civil Procedure, and all other applicable
23 laws, having been fully advised of same by her attorney of record. Respondent, having the
24 benefit of counsel hereby knowingly, intelligently, freely and voluntarily waives and gives up
25 each and every one of the rights set forth and/or referenced above.
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CULPABILITY

8. Respondent agrees that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 800-2013-000947 and that she has thereby subjected her Physician's and Surgeon's Certificate to disciplinary action. Respondent further agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

9. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph. It shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

10. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including electronic PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

11. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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DISCIPLINARY ORDER

A. PUBLIC REPRIMAND

IT IS HEREBY ORDERED: that Respondent Veronica Rebeca Rivera, M.D., Physician's and Surgeon's Certificate No. A93252, shall be and is hereby publicly reprimanded pursuant to California Business and Professions Code § 2227(a)(4). This Public Reprimand, which is issued in connection with Respondent's actions as set forth in Accusation No. 800-2013-000947, is as follows:

On September 4, 2010, you assumed responsibility for the management of the labor and delivery for Patient L.M. During the course of the patient's labor, non-reassuring fetal heart tracings were present and, despite your efforts to improve fetal status, warranted a more expeditious delivery.

B. CLINICAL COMPETENCE ASSESSMENT PROGRAM.

Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to Respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require Respondent's on-site participation for a minimum of three (3) and no more than five (5) days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

1 At the end of the evaluation, the program will submit a report to the Board or its designee
2 which unequivocally states whether the Respondent has demonstrated the ability to practice
3 safely and independently. Based on Respondent's performance on the clinical competence
4 assessment, the program will advise the Board or its designee of its recommendation(s) for the
5 scope and length of any additional educational or clinical training, evaluation or treatment for any
6 medical condition or psychological condition, or anything else affecting Respondent's practice of
7 medicine. Respondent shall comply with the program's recommendations.

8 Determination as to whether Respondent successfully completed the clinical competence
9 assessment program is solely within the program's jurisdiction.

10 If Respondent fails to enroll, participate in, or successfully complete the clinical
11 competence assessment program within the designated time period. Respondent shall receive a
12 notification from the Board or its designee to cease the practice of medicine within three (3)
13 calendar days after being so notified. The Respondent shall not resume the practice of medicine
14 until enrollment or participation in the outstanding portions of the clinical competence assessment
15 program have been completed. If the Respondent did not successfully complete the clinical
16 competence assessment program, the Board may file a disciplinary action and Respondent shall
17 not resume the practice of medicine until a final decision has been rendered on the accusation.

18 Respondent understands that failure to submit and/or complete the education course, as set
19 forth above, would constitute unprofessional conduct and grounds for further disciplinary action.

20 In consideration for her agreement to complete the education course, as set forth above,
21 Respondent shall be publicly reprimanded as set forth in the public letter of reprimand, as set
22 forth above in Paragraph 11(A).

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ACCEPTANCE

I, VERONICA R. RIVERA, M.D., have carefully read this Stipulated Settlement and Disciplinary Order and, having the benefit of counsel, enter into it freely, voluntarily, intelligently and with full knowledge of its force and effect on my Physician's and Surgeon's Certificate No. A93252. I fully understand that, after signing this stipulation, I may not withdraw from it, that it shall be submitted to the Medical Board of California for its consideration, and that the Board shall have a reasonable period of time to consider and act on this stipulation after receiving it. By entering into this stipulation, I fully understand that, upon formal acceptance by the Board, I shall be publically reprimanded by the Board and shall be required to comply with the terms and conditions of the Disciplinary Order set forth above. I, also, fully understand that any failure to comply with the terms and conditions of the Disciplinary Order set forth above shall constitute unprofessional conduct and that my Physician's and Surgeon's Certificate No. A93252 will be subject to further disciplinary action.

Dated:

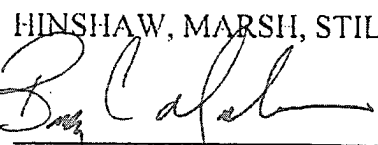
6/12/2017


VERONICA R. RIVERA, M.D.

I have read and fully discussed with Respondent VERONICA R. RIVERA, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

Dated:

6.14.2017

HINSHAW, MARSH, STILL & HINSHAW

BARRY C. MARSH
Attorneys for Respondent

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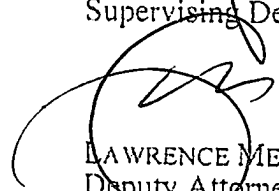
ENDORSEMENT

The foregoing Stipulation is respectfully submitted for consideration by the Medical Board
of California, Department of Consumer Affairs.

Dated: *June 21, 2017*

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General


LAWRENCE MERCER
Deputy Attorney General
Attorneys for Complainant

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Attorneys for Complainant
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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO May 20 2015
BY R. Young ANALYST

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2013-000947

13 **VERONICA R. RIVERA, M.D.**

706 N. Winchester Blvd.

San Jose, CA 95128

ACCUSATION

14 Physician's and Surgeon's Certificate No. A93252

15 Respondent.
16

17 Complainant alleges:

18 **PARTIES**

19 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Director of the Medical Board of California (Board).

21 2. On or about November 4, 2005, the Medical Board of California issued
22 Physician's and Surgeon's Certificate Number A93252 to Veronica R. Rivera, M.D. (Respondent).
23 The Physician's and Surgeon's certificate was in full force and effect at all times relevant to the
24 charges brought herein and will expire on October 31, 2015, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Medical Board of California, under the
27 authority of the following laws. All section references are to the Business and Professions Code
28 unless otherwise indicated.

1 4. Section 2004 of the Code states:

2 "The board shall have the responsibility for the following:

3 "(a) The enforcement of the disciplinary and criminal provisions of the Medical
4 Practice Act.

5 "(b) The administration and hearing of disciplinary actions.

6 "(c) Carrying out disciplinary actions appropriate to findings made by a panel or
7 an administrative law judge.

8 "(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
9 disciplinary actions.

10 "(e) Reviewing the quality of medical practice carried out by physician and
11 surgeon certificate holders under the jurisdiction of the board.

12 "(f) Approving undergraduate and graduate medical education programs.

13 "(g) Approving clinical clerkship and special programs and hospitals for the
14 programs in subdivision (f).

15 "(h) Issuing licenses and certificates under the board's jurisdiction.

16 "(i) Administering the board's continuing medical education program."

17 5. Section 2227 of the Code provides that a licensee who is found guilty under the
18 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
19 one year, placed on probation and required to pay the costs of probation monitoring, or such other
20 action taken in relation to discipline as the board deems proper.

21 6. Section 2234 of the Code states:

22 "The board shall take action against any licensee who is charged with
23 unprofessional conduct. In addition to other provisions of this article, unprofessional conduct
24 includes, but is not limited to, the following:

25 "(c) Repeated negligent acts. To be repeated, there must be two or more negligent
26 acts or omissions. An initial negligent act or omission followed by a separate and distinct
27 departure from the applicable standard of care shall constitute repeated negligent acts.

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1 "(1) An initial negligent diagnosis followed by an act or omission medically
2 appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

3 "(2) When the standard of care requires a change in the diagnosis, act, or omission
4 that constitutes the negligent act described in paragraph (1), including, but not limited to, a
5 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
6 applicable standard of care, each departure constitutes a separate and distinct breach of the
7 standard of care."

8 **FIRST CAUSE FOR DISCIPLINARY ACTION**

9 (Unprofessional Conduct/Repeated Negligent Acts)

10 7. Respondent's license is subject to discipline and Respondent is guilty of
11 unprofessional conduct in violation of Business and Professions Code §§ 2234 and/or 2234(c) in
12 that Respondent committed repeated negligent acts in her patient care and treatment, including
13 but not limited to the following:

14 A. On August 27, 2010, Patient L.M.¹ came under Respondent's care and treatment
15 for prenatal and obstetric care. L.M., a 41 year old Spanish-speaking primigravida in the third
16 trimester of pregnancy, had not been receiving prenatal care prior to August 2010. Previously, on
17 August 10, 2010, she had been seen at O'Connor Hospital for complaints of decreased fetal
18 movement and was discharged after being reassured of fetal wellbeing by an ultrasound
19 examination. She had also returned to the hospital on August 24, and was discharged with a
20 diagnosis of early latent labor and instructions to establish care with an obstetrician. At her initial
21 visit with Respondent, an estimated delivery date of September 21, 2010, was established by third
22 trimester ultrasound. L.M. was examined and given instructions on counting fetal kicks and labor
23 precautions, and was given an order for laboratory tests.

24 B. On August 30, 2010, L.M. returned with complaints of pelvic pressure. Her cervix
25 was closed but 50% effaced and the fetal head had descended from - 3 position to - 1. Although it
26 is not documented in Respondent's chart, Patient L.M. and her partner reported that they had

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28 ¹ Patient names are abbreviated to protect privacy interests.

1 advised Respondent of the patient's desire for delivery by cesarean section when the time came.
2 The patient was told to return in one week.

3 C. On September 4, 2010, L.M., presented to the hospital in spontaneous labor. She
4 stated that contractions had started at approximately 0400. At 1130, the cervix was
5 approximately 6 cm dilated, 100% effaced, with the vertex at - 2 station. Patient L.M. was
6 admitted by another physician, who contacted Respondent to take over intrapartum management.

7 D. Respondent arrived and assumed responsibility for the care and labor management
8 of L.M. In Respondent's note timed 1400 hours, she recorded a fetal heart rate (FHR) of 145
9 beats per minute (bpm), with moderate variability and no decelerations. Respondent noted that
10 excellent progress in labor had been made and she anticipated a spontaneous delivery.

11 E. Respondent's next note is timed at 1630 hours and states that the patient had an
12 epidural placed and was comfortable. The FHR was reported as 145 bpm with moderate
13 variability and accelerations and the fetal tracings were, overall, consistent with a classification of
14 Category I, i.e., with no specific action required.² Contractions were 2-3 minutes apart. The
15 cervical exam was anterior lip, 100% effaced, zero station. In her progress note timed 1630 hours
16 -- albeit Respondent indicated that labor was progressing well -- Respondent documented her plan
17 for Pitocin augmentation of labor.

18 F. Patient L.M. began pushing at approximately 1700 hours, with contractions
19 coming every 1-2 minutes, at which time Respondent found the cervix to be complete with the
20 head at zero to +1 station. At this point the tracing showed moderate variability, but recurrent
21 variable decelerations with contractions and pushing effort. This was consistent with Category II,
22 i.e., requiring evaluation, continued surveillance, reevaluation and possibly ancillary tests to
23 assure fetal wellbeing. Pitocin was increased to 6 mu/min. During the approximate period of
24 1700 to 1740 hours, Patient L.M. was pushing while Respondent coached her in Spanish. By
25 approximately 1730, the fetal heart rate baseline became tachycardic and the variable
26 decelerations more deep and prolonged. A nurse who was present at the time noted that there

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28 ² ACOG Practice Bulletin, number 106 (July 2009).

1 were multiple late and variable decelerations and she advised Respondent of this. Although it is
2 not charted, the nurse recalled that the patient repeatedly stated that she wanted a cesarean
3 section, but that Respondent urged her to continue pushing.

4 G. At approximately 1740, Respondent was called away to attend a delivery for
5 another patient whose OB/GYN was still on route to the hospital. According to her notes, she
6 returned at approximately 1820 hours. The fetal heart tracing progressively worsened, with
7 continued tachycardia and gradual loss of variability until, at approximately 1840, variability is
8 absent from the tracing. At this point in time, the fetal heart tracing was consistent with Category
9 III, i.e., associated with abnormal fetal acid-base status, requiring immediate evaluation,
10 expeditious efforts to resolve the abnormal FHR pattern and, failing resolution, expedited
11 delivery.

12 H. At 1900, Respondent noted that the FHR decreased "to 60's" for 5-6 minutes. At
13 that time Respondent reported that she was advised there was not an available operating room, so
14 she instructed the patient to stop pushing and had the patient change positions. Respondent
15 discontinued the Pitocin at 1902 and Terbutaline was administered at approximately 1912.
16 Despite these efforts to improve fetal status, the FHR did not improve to the point that it could be
17 considered reassuring.

18 I. Patient L.M. was moved to the operating room at about 1922 and arrived at 1925.
19 She was consented in Spanish for a vacuum-assisted delivery, with the possibility of cesarean
20 section. Two attempts with the Mityvac, each approximately 20 seconds, were made at 1934 and
21 1935 without fetal descent. The anesthesiologist arrived at about the time of the second attempt.
22 A cesarean section was called by Respondent at 1937. The incision was made at 1945 and the
23 infant delivered at 1947. Respondent described the infant as having poor tone and pale color after
24 delivery. The anesthesiology note states that the infant was not crying and was not breathing.
25 An emergency intubation was performed and the infant was taken to NICU. Apgar scores were 2,
26 3 and 5.

